

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WEST SONOMA COUNTY UNION HIGH
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014080108

ORDER GRANTING MOTION FOR
STAY PUT

On July 30, 2014, Student filed a motion for stay put. On August 5, 2014, West Sonoma County Union High School District (West Sonoma) filed an opposition to Student's motion. West Sonoma asserts that Student's planned discharge from Innercept, an out-of-state residential treatment center scheduled for August 1, 2014, is a change in circumstance requiring West Sonoma to offer a placement that replicates, as closely as possible, Student's current placement rather than maintaining her placement at Innercept.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

In specific situations, Courts have recognized that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) For example, progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v.*

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

San Luis Coastal Unified Sch. Dist. (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].) Similarly, it does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].

DISCUSSION

Student’s last agreed-upon and implemented IEP dated May 13, 2013, was amended on June 19, 2013, and signed in January 2014, states that Student would be placed at Innercept, a residential treatment center in Idaho. According to the IEP notes, the IEP team recommended the residential treatment program to address Student’s persistent emotional problems and specific symptoms of depression that manifested in suicidal ideation, obsession, and a written detailed plan that included the school campus as the place where Student would attempt suicide. In June 2014, Student’s IEP team met to discuss Student’s future discharge from Innercept. West Sonoma offered Student a residential treatment center located near her parents’ home for the 2014-2015 school year. Student’s parents did not accept West Sonoma’s offer that Student remain at Innercept through the first half of the 2014 school year. West Sonoma filed the instant action.

According to the motion for stay put and the opposition it appears that Student had a planned discharge date from Innercept of August 1, 2014. The parties dispute the reason for the discharge. Student asserts that the planned discharge was based on West Sonoma’s decision to terminate its contract with Innercept for Student. West Sonoma disputes that assertion and states that, “Innercept staff have agreed that Student’s discharge date from Innercept should be August 1, 2014.” The parties’ dispute regarding the reason for the planned discharge, however, does not need to be resolved to rule on the pending motion for stay put.

Student’s last agreed upon and implemented IEP at the time the dispute in this matter arose places her at Innercept. West Sonoma asserts that the planned discharge date should be considered a changed circumstance, requiring that it provide only a comparable residential treatment facility placement and not Innercept. West Sonoma’s argument is not persuasive.

Cases in which the courts have found a changed circumstance generally involve situations where maintaining the status quo is illogical such as when a student matriculates to the next grade, unreasonable as with a school closure, or outside of the local education

agency's control such as when a non-public school refuses to keep a student. West Sonoma presented no evidence that such is the case here. In fact, West Sonoma's opposition makes clear that this is a situation where the status quo can be maintained. Innercept has not refused to keep Student. In West Sonoma's opposition it states merely that, "Innercept has been supportive of Student's August 1, 2014, discharge date," and that her treating psychiatrist there, "was supportive of Student's discharge as long as a program such as a wrap-around or step-down RTC would be available to her."

The purpose underlying stay put is to provide students with consistency during the hearing process and to prevent school districts from exerting their superior position when they control the purse strings. West Sonoma presented no evidence that the planned discharge is a changed circumstance such that it cannot maintain the status quo while this case is pending. Accordingly, Student's motion for stay put at Innercept is granted.

ORDER

1. Student's Motion for Stay Put is granted.
2. West Sonoma shall maintain Student's placement at Innercept while this due process proceeding is pending unless the parties agree otherwise.

DATE: August 5, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings